

CALIFORNIA GAMBLING CONTROL COMMISSION

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DATE: August 25, 2003

TO: Gambling Control Commission

FROM: Gary Qualset, Deputy Director
Licensing and Compliance Division

SUBJECT: Indian Gaming Special Distribution Fund and Indian Gaming Revenue Sharing Trust Fund Report to Legislature per Assembly Bill 673, Chapter 210, Statutes of 2003 (Government Code Section 12012.90)

On July 29, 2003, the Legislature passed Assembly Bill 673. The bill included an urgency clause. The Governor subsequently approved and signed the bill on August 9, 2003. The bill was chaptered by the Secretary of State on August 11, 2003, as Chapter 210, Statutes of 2003 to take effect immediately. The California Gambling Control Commission (Commission) held its previous meeting on August 6, 2003, prior to the enactment of this legislation. A copy of Assembly Bill 673 as enacted is attached to this report.

This legislation adds Section 12012.90 to the Government Code that requires the Commission to:

- Determine the aggregate amount of shortfalls in payments that occurred in the Indian Gaming Revenue Sharing Trust Fund pursuant to Section 4.3.2.1 of the Tribal-State Gaming Compacts (Compact) for each fiscal year commencing with the 2002-03 fiscal year as prescribed in subdivision (a) of Government Code Section 12012.90,
- Report the amount of the shortfall that was determined to the committees in the Legislature that consider the State Budget after the Commission authorizes the final payment for each fiscal year from the Indian Gaming Revenue Sharing Trust Fund, and
- Distribute the moneys without delay upon a transfer and appropriation from the Indian Gaming Special Distribution Fund to the Indian Gaming Revenue Sharing Trust Fund to eligible recipient Indian tribes for each quarter that a tribe was eligible to receive a distribution during the fiscal year immediately preceding.

As set forth in the newly added Government Code Section 12012.90, in case of occurrence of any shortfalls in payments that occur in the Indian Gaming Revenue Sharing Trust Fund during the preceding fiscal year, the Commission must determine the aggregate amount of that shortfall according to the method delineated in subparagraphs (A) and (B) of paragraph (1) of subdivision (a) of Government Code Section 12012.90. This method provides that the amount shall be the sum of the amounts determined in the above two subparagraphs as follows:

- A. For each eligible recipient Indian tribe that received distributions for all four quarters of the fiscal year the amount shall be the difference between \$1.1 million and the actual amount paid to each eligible recipient Indian tribe during the fiscal year, and

- B. For each eligible recipient Indian tribe that received distributions for less than four quarters of the fiscal year the amount shall be the difference between \$275,000 for each quarter in the fiscal year that a recipient Indian tribe was eligible to receive moneys and the actual amount paid to each eligible recipient Indian tribe during the fiscal year.

The Commission has always authorized quarterly distributions from the Indian Gaming Revenue Sharing Trust Fund on a conditional basis pending receipt of a self-certified Tribal-State Compact Gaming Device Certification Form that evidences eligibility to receive a quarterly distribution. Tribes that are required to complete such a certification form are those tribes that entered into a Compact with the State of California and have operated less than three hundred-fifty gaming devices during any particular quarter. All distributions are also subject to audit and verification of eligibility by the Commission. If a tribe is subsequently determined to be a "Compact Tribe" by definition of the Compact, and is thus determined to not be eligible to have received such a distribution, any overpayments that may have been made are subject to refund by a tribe(s) to the Commission and the Indian Gaming Revenue Sharing Trust Fund.

The Commission has a fiduciary responsibility as Trustee of the Indian Gaming Revenue Sharing Trust Fund per all of the Compacts as noted in Section 4.3.2(a)(ii). The Commission will, from time to time and as deemed necessary, conduct audits to determine eligibility for receipt of quarterly distributions. As such, the Commission has conducted audits to determine eligibility to receive prior quarterly distributions. Some audits are still pending completion and resolution. It is possible that an overpayment may have occurred in a quarter of fiscal year 2002-03 that would affect the actual aggregate amount of shortfall to be reported. It is reasonably probable that this actually occurred based on previous information that was provided to the Commission. The amount can be reasonably estimated so as to calculate an amount of shortfall in payments that occurred in accordance with the above-prescribed method. Resolution of this matter is pending receipt of final information that is needed to act.

The Commission must act in a prudent and cautious fashion in order to insure the proper distribution on moneys in the Indian Gaming Revenue Sharing Trust Fund. In order to provide timely reporting information to the Legislature as required by Government Code Section 12012.90(b) the Commission is submitting the two potential amounts detailed in this report. Because of a current audit that is pending completion and resolution, the two potential amounts of deficiency in payments that occurred in the Indian Gaming Revenue Sharing Trust Fund for the 2002-03 fiscal year are being presented to report the most likely amounts to the Legislature in the report that is now required to be submitted. These two amounts are detailed in Exhibit 1 and 2 that are attached to this report.

The amount of the aggregate shortfall in Exhibit 1 takes into account the likelihood that an overpayment in the amount of \$50,358.63 was made to one tribe for the quarter ended March 31, 2003. The amount in Exhibit 1 is the aggregate amount of the shortfall in payments pending resolution of the open eligibility audit. It also allows for the potential recollection and refund of this amount back to the Indian Gaming Revenue Sharing Trust Fund directly from the shortfall distribution for retroactive distribution. Upon the occurrence of this an additional amount of \$680.52 would subsequently be distributed to all other eligible recipient Indian tribes for that quarter in fiscal year 2002-03. The Commission would temporarily escrow the potential overpayment amount of \$50,358.63 in the Indian Gaming Revenue Sharing Trust Fund and net it against the current shortfall distribution to this tribe. Shortfall distributions to all eligible tribes in this situation are detailed in Exhibit 1. Seventy-one (71) tribes would be receiving \$683,160.81 and three (3) tribes would be receiving \$503,332.87 depending on the number of quarters during the fiscal year that the tribes were eligible as Non-Compact Tribes. One (1) tribe would be receiving \$279,372.02 net of the escrowed amount of \$50,358.63 for a total of \$229,013.39

pending resolution of the open eligibility audit. The aggregate amount of the shortfall in payments upon resolution of this matter would be \$50,293,788.14.

Alternatively, Exhibit 2 presents the aggregate amount of the shortfall in payments assuming that no adjustment, recollection, or refund is needed and all actual quarterly payments that were made for fiscal year 2002-03 were to eligible recipient Indian tribes. Details of existing approved distributions and resulting shortfalls in this situation on an individual-tribe basis are displayed in Exhibit 2. Seventy-one (71) tribes would be receiving \$683,841.33 and four (4) tribes would be receiving \$504,013.39 in this proposed distribution, depending on the number of quarters during the fiscal year that the tribes were eligible as Non-Compact Tribes. The aggregate amount of the shortfall in payments in this situation would be \$50,568,787.99.

Pursuant to Section 9 of Assembly Bill 673, the Legislature has authorized the transfer of the sum of \$50,568,787.99 from the Indian Gaming Special Distribution Fund to the Indian Gaming Revenue Sharing Trust Fund and has appropriated the same amount from the Indian Gaming Revenue Sharing Trust Fund to the Commission for making distribution under the new Government Code Section 12012.90. Commission staff has been advised that the actual transfer of this money should be occurring today for subsequent distribution by the Commission without delay. Commission staff will work with our Accounting Office, the State Controller's Office, and the Department of Finance to ensure that any of the above transferred and appropriated moneys, if any, that are not appropriately distributed per Government Code Section 12012.90 will be reverted back to the Indian Gaming Special Distribution Fund as appropriate.

RECOMMENDATION: *It is recommended that the Commission approve this report that is now required and that determines the aggregate amount of shortfalls in payments pursuant to Government Code section 12012.90 under the methodology prescribed therein and as is taking into consideration the distribution contingencies identified above and in Exhibits 1 and 2.*

Exhibit 1**Aggregate Amount of Shortfalls in Payments that Occurred in the Indian Gaming Revenue Sharing Trust Fund for Fiscal Year 2002-03**

Eligible Recipient Indian Tribe	Quarters Eligible	Total Potential Distribution	Total Approved Distribution	Aggregate Shortfall
Alturas Indian Rancheria	4	\$1,100,000.00	\$416,839.19	\$683,160.81
Augustine Band of Mission Indians	2	550,000.00	270,627.98	279,372.02
Bear River Band of the Rohnerville Rancheria	4	1,100,000.00	416,839.19	683,160.81
Benton Paiute Reservation	4	1,100,000.00	416,839.19	683,160.81
Big Lagoon Rancheria	4	1,100,000.00	416,839.19	683,160.81
Big Pine Reservation	4	1,100,000.00	416,839.19	683,160.81
Big Sandy Rancheria	4	1,100,000.00	416,839.19	683,160.81
Blue Lake Rancheria	4	1,100,000.00	416,839.19	683,160.81
Bridgeport Paiute Indian Colony	4	1,100,000.00	416,839.19	683,160.81
Buena Vista Rancheria	4	1,100,000.00	416,839.19	683,160.81
Cahto Indian Tribe of Laytonville	4	1,100,000.00	416,839.19	683,160.81
Cahuilla Band of Mission Indians	4	1,100,000.00	416,839.19	683,160.81
California Valley Miwok Tribe	4	1,100,000.00	416,839.19	683,160.81
Cedarville Rancheria	4	1,100,000.00	416,839.19	683,160.81
Chemehuevi Indian Tribe	4	1,100,000.00	416,839.19	683,160.81
Cher-Ae Heights Indian Community	4	1,100,000.00	416,839.19	683,160.81
Chicken Ranch Rancheria	4	1,100,000.00	416,839.19	683,160.81
Cloverdale Rancheria	4	1,100,000.00	416,839.19	683,160.81
Cold Springs Rancheria	4	1,100,000.00	416,839.19	683,160.81
Colorado River Indian Tribes	4	1,100,000.00	416,839.19	683,160.81
Cortina Rancheria	4	1,100,000.00	416,839.19	683,160.81
Cuyapaipe Community of Mission Indians	4	1,100,000.00	416,839.19	683,160.81
Death Valley Timbi-Sha Shoshone Tribe	4	1,100,000.00	416,839.19	683,160.81
Dry Creek Rancheria	3	825,000.00	321,667.13	503,332.87
Elem Indian Colony	4	1,100,000.00	416,839.19	683,160.81
Elk Valley Rancheria	4	1,100,000.00	416,839.19	683,160.81
Enterprise Rancheria	4	1,100,000.00	416,839.19	683,160.81
Fort Bidwell Indian Community	4	1,100,000.00	416,839.19	683,160.81
Fort Independence Reservation	4	1,100,000.00	416,839.19	683,160.81
Fort Mojave Indian Tribe	4	1,100,000.00	416,839.19	683,160.81
Graton Rancheria	4	1,100,000.00	416,839.19	683,160.81
Greenville Rancheria	4	1,100,000.00	416,839.19	683,160.81
Grindstone Rancheria	4	1,100,000.00	416,839.19	683,160.81
Guidiville Rancheria	4	1,100,000.00	416,839.19	683,160.81
Hoopa Valley Tribe	4	1,100,000.00	416,839.19	683,160.81
Inaja-Cosmit Mission Indians	4	1,100,000.00	416,839.19	683,160.81
Ione Band of Miwok Indians	4	1,100,000.00	416,839.19	683,160.81
Jamul Indian Village	4	1,100,000.00	416,839.19	683,160.81

Exhibit 1 (Continued)**Aggregate Amount of Shortfalls in Payments that Occurred in the Indian Gaming Revenue Sharing Trust Fund for Fiscal Year 2002-03**

Eligible Recipient Indian Tribe	Quarters Eligible	Total Potential Distribution	Total Approved Distribution	Aggregate Shortfall
Karuk Tribe of California	4	1,100,000.00	416,839.19	683,160.81
La Jolla Band of Mission Indians	4	1,100,000.00	416,839.19	683,160.81
La Posta Band of Mission Indians	4	1,100,000.00	416,839.19	683,160.81
Lone Pine Reservation	4	1,100,000.00	416,839.19	683,160.81
Los Coyotes Band of Cahuilla Indians	4	1,100,000.00	416,839.19	683,160.81
Lower Lake Rancheria	4	1,100,000.00	416,839.19	683,160.81
Lytton Rancheria	4	1,100,000.00	416,839.19	683,160.81
Manchester Point Arena Rancheria	4	1,100,000.00	416,839.19	683,160.81
Manzanita Mission Indians	4	1,100,000.00	416,839.19	683,160.81
Mechoopda Indian Tribe	4	1,100,000.00	416,839.19	683,160.81
Mesa Grande Mission Indians	4	1,100,000.00	416,839.19	683,160.81
Northfork Rancheria	4	1,100,000.00	416,839.19	683,160.81
Paiute Bishop Community	4	1,100,000.00	416,839.19	683,160.81
Pinoleville Reservation	4	1,100,000.00	416,839.19	683,160.81
Pit River Tribe	4	1,100,000.00	416,839.19	683,160.81
Potter Valley Rancheria	4	1,100,000.00	416,839.19	683,160.81
Picayune Rancheria	3	825,000.00	321,667.13	503,332.87
Quartz Valley Indian Community	4	1,100,000.00	416,839.19	683,160.81
Quechan Tribe of Fort Yuma	4	1,100,000.00	416,839.19	683,160.81
Ramona Mission Indians	4	1,100,000.00	416,839.19	683,160.81
Redwood Valley Rancheria	4	1,100,000.00	416,839.19	683,160.81
Resighini Rancheria	4	1,100,000.00	416,839.19	683,160.81
Round Valley Indian Tribe	4	1,100,000.00	416,839.19	683,160.81
Santa Rosa Band of Cahuilla Mission Indians	4	1,100,000.00	416,839.19	683,160.81
Santa Ysabel Mission Indians	4	1,100,000.00	416,839.19	683,160.81
Scotts Valley Band of Pomo Indians	4	1,100,000.00	416,839.19	683,160.81
Sherwood Valley Pomo Indians	4	1,100,000.00	416,839.19	683,160.81
Shingle Springs Rancheria	4	1,100,000.00	416,839.19	683,160.81
Smith River Rancheria	4	1,100,000.00	416,839.19	683,160.81
Stewarts Point Rancheria	4	1,100,000.00	416,839.19	683,160.81
Susanville Indian Rancheria	4	1,100,000.00	416,839.19	683,160.81
Table Bluff Reservation	4	1,100,000.00	416,839.19	683,160.81
Torrez-Martinez Mission Indians	4	1,100,000.00	416,839.19	683,160.81
Upper Lake Band of Pomo Indians	4	1,100,000.00	416,839.19	683,160.81
United Auburn Indian Community	3	825,000.00	321,667.13	503,332.87
Washoe Tribe of Nevada & California	4	1,100,000.00	416,839.19	683,160.81
Yurok Tribe of the Yurok Reservation	4	1,100,000.00	416,839.19	683,160.81
Total		\$81,125,000.00	\$30,831,211.86¹	\$50,293,788.14

Footnote: ¹ Includes subsequent retroactive distribution of overpayment to eligible recipient Indian tribes.

Exhibit 2**Aggregate Amount of Shortfalls in Payments that Occurred in the Indian Gaming Revenue Sharing Trust Fund for Fiscal Year 2002-03**

Eligible Recipient Indian Tribe	Quarters Eligible	Total Potential Distribution	Total Approved Distribution	Aggregate Shortfall
Alturas Indian Rancheria	4	\$1,100,000.00	\$416,158.67	\$683,841.33
Augustine Band of Mission Indians	3	825,000.00	320,986.61	504,013.39
Bear River Band of the Rohnerville Rancheria	4	1,100,000.00	416,158.67	683,841.33
Benton Paiute Reservation	4	1,100,000.00	416,158.67	683,841.33
Big Lagoon Rancheria	4	1,100,000.00	416,158.67	683,841.33
Big Pine Reservation	4	1,100,000.00	416,158.67	683,841.33
Big Sandy Rancheria	4	1,100,000.00	416,158.67	683,841.33
Blue Lake Rancheria	4	1,100,000.00	416,158.67	683,841.33
Bridgeport Paiute Indian Colony	4	1,100,000.00	416,158.67	683,841.33
Buena Vista Rancheria	4	1,100,000.00	416,158.67	683,841.33
Cahto Indian Tribe of Laytonville	4	1,100,000.00	416,158.67	683,841.33
Cahuilla Band of Mission Indians	4	1,100,000.00	416,158.67	683,841.33
California Valley Miwok Tribe	4	1,100,000.00	416,158.67	683,841.33
Cedarville Rancheria	4	1,100,000.00	416,158.67	683,841.33
Chemehuevi Indian Tribe	4	1,100,000.00	416,158.67	683,841.33
Cher-Ae Heights Indian Community	4	1,100,000.00	416,158.67	683,841.33
Chicken Ranch Rancheria	4	1,100,000.00	416,158.67	683,841.33
Cloverdale Rancheria	4	1,100,000.00	416,158.67	683,841.33
Cold Springs Rancheria	4	1,100,000.00	416,158.67	683,841.33
Colorado River Indian Tribes	4	1,100,000.00	416,158.67	683,841.33
Cortina Rancheria	4	1,100,000.00	416,158.67	683,841.33
Cuyapaipe Community of Mission Indians	4	1,100,000.00	416,158.67	683,841.33
Death Valley Timbi-Sha Shoshone Tribe	4	1,100,000.00	416,158.67	683,841.33
Dry Creek Rancheria	3	825,000.00	320,986.61	504,013.39
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Graton Rancheria	4	1,100,000.00	416,158.67	683,841.33
Greenville Rancheria	4	1,100,000.00	416,158.67	683,841.33
Grindstone Rancheria	4	1,100,000.00	416,158.67	683,841.33
Guidiville Rancheria	4	1,100,000.00	416,158.67	683,841.33
Hoopla Valley Tribe	4	1,100,000.00	416,158.67	683,841.33
Inaja-Cosmit Mission Indians	4	1,100,000.00	416,158.67	683,841.33
Ione Band of Miwok Indians	4	1,100,000.00	416,158.67	683,841.33
Jamul Indian Village	4	1,100,000.00	416,158.67	683,841.33

Exhibit 2 (Continued)**Aggregate Amount of Shortfalls in Payments that Occurred in the Indian Gaming Revenue Sharing Trust Fund for Fiscal Year 2002-03**

Eligible Recipient Indian Tribe	Quarters Eligible	Total Potential Distribution	Total Approved Distribution	Aggregate Shortfall
Karuk Tribe of California	4	1,100,000.00	416,158.67	683,841.33
La Jolla Band of Mission Indians	4	1,100,000.00	416,158.67	683,841.33
La Posta Band of Mission Indians	4	1,100,000.00	416,158.67	683,841.33
Lone Pine Reservation	4	1,100,000.00	416,158.67	683,841.33
Los Coyotes Band of Cahuilla Indians	4	1,100,000.00	416,158.67	683,841.33
Lower Lake Rancheria	4	1,100,000.00	416,158.67	683,841.33
Lytton Rancheria	4	1,100,000.00	416,158.67	683,841.33
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Quartz Valley Indian Community	4	1,100,000.00	416,158.67	683,841.33
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Ramona Mission Indians	4	1,100,000.00	416,158.67	683,841.33
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Santa Ysabel Mission Indians	4	1,100,000.00	416,158.67	683,841.33
Scotts Valley Band of Pomo Indians	4	1,100,000.00	416,158.67	683,841.33
Sherwood Valley Pomo Indians	4	1,100,000.00	416,158.67	683,841.33
Shingle Springs Rancheria	4	1,100,000.00	416,158.67	683,841.33
Smith River Rancheria	4	1,100,000.00	416,158.67	683,841.33
Stewarts Point Rancheria	4	1,100,000.00	416,158.67	683,841.33
Susanville Indian Rancheria	4	1,100,000.00	416,158.67	683,841.33
Table Bluff Reservation	4	1,100,000.00	416,158.67	683,841.33
Torrez-Martinez Mission Indians	4	1,100,000.00	416,158.67	683,841.33
Upper Lake Band of Pomo Indians	4	1,100,000.00	416,158.67	683,841.33
United Auburn Indian Community	3	825,000.00	320,986.61	504,013.39
Washoe Tribe of Nevada & California	4	1,100,000.00	416,158.67	683,841.33
Yurok Tribe of the Yurok Reservation	4	1,100,000.00	416,158.67	683,841.33
Total		\$81,400,000.00	\$30,831,212.01	\$50,568,787.99